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April 11, 2018

**BY CM-ECF FILING**

The Honorable Richard D. Bennett  
United States District Judge  
United States District Court  
for the District of Maryland  
101 W. Lombard Street  
Baltimore, Maryland 21202

Re: Burgess v. Baltimore Police Department, et al.  
Civil Action No. 1:15-cv-00834-RDB

Dear Judge Bennett:

We write in regard to the above-referenced case, which was tried before you in November, 2017. As you are aware, this Firm defended Gerald Alan Goldstein, among others and a jury verdict was returned against Mr. Goldstein. Following the Court's denial of Mr. Goldstein's Motions under Rules 50 and 59, the jury's verdict and the orders incorporated therein were appealed to the United States Court of Appeals for the Fourth Circuit. An issue has arisen in reference to that appeal that we thought prudent to advise you of, in the event that the case is remanded for lack of a final decision under 28 U.S.C. § 1291.

Mr. Burgess filed claims against both individual employees and former employees of the Baltimore Police Department ("BPD"), as well as claims under *Monell v. Department of Social Services of the City of New York* against the BPD itself. On March 23, 2016, with Mr. Burgess's agreeing not to oppose, this Court stayed the *Monell* claims and bifurcated the case. (ECF No. 68).

With the *Monell* claims bifurcated, and with the other individual defendants dismissed from the case, only the claims against Mr. Goldstein went to the jury. Following the verdict, this Court entered an Order of Judgment on November 21, 2017, that was designated "to be a Final Judgment within the meaning of Fed. R. Civ. P. 58," (ECF No. 366), and it has denied Mr. Burgess's efforts to reopen discovery into the *Monell* claims while the appeal is pending, (ECF No. 408). The case is presently stayed. (Unnumbered ECF Notice dated March 12, 2018).

While we believe that this Court intended the November 21, 2017 Order of Judgment as a "final decision," we are concerned that the Fourth Circuit may not view it as such and may dismiss the appeal as premature and remand the case. We refer the Court to *Patterson v. City of Omaha*, 779 F.3d 795, 800 (8th Cir. 2015), which held that the bifurcation of a *Monell* claim

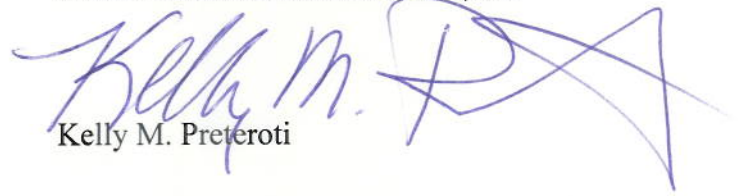
does not “create two separate actions,” such that a judgment against an individual officer does not constitute a “final decision” under 28 U.S.C. § 1291. We are likewise concerned that the Fourth Circuit may not find that the November 21, 2017 Order of Judgment meets the certification requirements of 28 U.S.C. § 1292(b).

We have brought the above issue to Plaintiff counsel’s attention; however, the Plaintiff is not inclined to dismiss the *Monell* claims against the BPD. To avoid undue delay, we thought it best to alert the Court to this issue now, so that it can be addressed if and when the Fourth Circuit dismisses and remands the appeal.

We can be available for a teleconference if the Court wishes to discuss this further.

Sincerely yours,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

  
Kelly M. Preteroti

KMP:iuj

cc: All Counsel of Record (by CM-ECF filing)